

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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JEFFERSON-PILOT LIFE . CIVIL ACTION NO. C-1-02-479  
INSURANCE COMPANY, et al., .  
Plaintiffs, . Cincinnati, Ohio  
- v - . Tuesday, August 17, 2004  
CHRISTOPHER L. KEARNEY, . 3:00 p.m. Hearing  
Defendant. . Cross-Motions for Summary  
Judgment  
.....

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE S. ARTHUR SPIEGEL, JUDGE  
TRANSCRIPT ORDERED BY: William R. Ellis, Esq.

APPEARANCES:

For the Plaintiffs: WOOD & LAMPING  
BY: William R. Ellis, Esq.  
and Amy Gasser Callow, Esq.  
600 Vine Street  
Suite 2500  
Cincinnati, Ohio 45202  
  
For the Defendant: GRAYDON, HEAD & RITCHEY  
BY: Michael A. Roberts, Esq.  
511 Walnut Street  
Cincinnati, Ohio 45202  
  
Also Present: Mr. Christopher Kearney  
  
Law Clerk: Keith Syler, Esq.  
  
Courtroom Clerk: Kevin Moser  
  
Court Reporter: Mary Ann Ranz

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1 THE COURT: So, we'll try to find a date and notify  
2 you, and we'll put on an order to the effect that -- At this  
3 point, if you want to file -- if you want to file a  
4 post-trial -- post-argument brief --

5 MR. ROBERTS: I'm confused.

6 THE COURT: -- on your position opposing -- seeking  
7 summary judgment --

8 MR. ROBERTS: I'm confused. Are you contemplating  
9 another oral hearing at another --

10 THE COURT: Another oral --

11 MR. ELLIS: Your Honor?

12 THE COURT: So Mr. Ellis to have his shot. You had  
13 taken up -- your argument's taken about two hours.

14 MR. ROBERTS: I would like the opportunity at the  
15 next oral hearing to address some of the points he raised.

16 THE COURT: So, he's entitled to have the same --  
17 similar treatment in court on his motion.

18 MR. ROBERTS: Your Honor, we have a November 16th  
19 trial date, for personal reasons.

20 THE COURT: What's that?

21 MR. ROBERTS: We have a November 16th trial date  
22 that for personal reasons needs to be preserved.

23 THE COURT: November or September?

24 MR. ROBERTS: November.

25 THE COURT: Well, this argument -- I think probably

1 this case can go out on -- if we find there's some factual  
2 issues, then, of course, it won't go out on summary judgment.  
3 But if I find I don't think there are any factual issues,  
4 it's just a question of interpretation, then, well -- well,  
5 it might require that -- to determine what the -- how the  
6 case should be ultimately decided, it may require a trial.

7 MR. ELLIS: Let me -- let me suggest, Your Honor, to  
8 simplify this, and to preserve the trial date that  
9 Mr. Roberts wants to preserve, that we will waive the oral  
10 argument upon the Court's stated condition that we can file a  
11 post-argument brief, which hopefully will clarify the issue  
12 of both motions for summary judgment for the Court.

13 THE COURT: I would prefer that.

14 MR. ELLIS: That will be fine.

15 THE COURT: We'll stay on track.

16 MR. ELLIS: That will be fine, Your Honor. We'll do  
17 that.

18 THE COURT: Respond in about a week's time.

19 MR. ELLIS: Within a week?

20 MS. CALLOW: That's fine.

21 MR. ELLIS: Can I have ten days?

22 THE COURT: You can respond within a week, and then  
23 I'll be -- then everything will be ready.

24 MR. ELLIS: Your Honor, because we have  
25 cross-motions and because of the circumstances, can we file

1 these briefs simultaneously?

2 THE COURT: What's that?

3 MR. ELLIS: Rather than a response brief, just  
4 post-argument briefs simultaneously filed --

5 THE COURT: Okay.

6 MR. ELLIS: -- all right? And we can do that --

7 THE COURT: Both of you file what you want. I just  
8 want to read one document from you and one document from  
9 Mr. Roberts. And I know there's been a lot of hostility --  
10 animosity in this case, from reports I've gotten from others.  
11 I expect it no longer to occur.

12 MR. ELLIS: There is none from this side, Your  
13 Honor.

14 THE COURT: All right.

15 MR. ELLIS: We will -- we will file simultaneous  
16 briefs. Are you in agreement?

17 MR. ROBERTS: That's perfectly all right.

18 THE COURT: You have a week to get something in on  
19 however you want to frame it. You've got a week to respond,  
20 however you want to frame it, and that's the end of the  
21 briefing.

22 MR. ROBERTS: Thank you.

23 THE COURT: Okay?

24 MR. ELLIS: I'm sorry, Your Honor. It's the  
25 response problem that I'm concerned about. What I'd like to

1 do, if we file simultaneous briefs -- no response, no reply,  
2 we just each state our case to the Court in a brief --

3 THE COURT: No, you don't have -- He's not going to  
4 your -- Well, okay. Both of you -- Put it this way: Both of  
5 you file your briefs within a week's time.

6 MR. ELLIS: That's fine, Your Honor. Tuesday next.

7 THE COURT: Both sides. And that's all the briefing  
8 I want to see on this. And I'll consider your brief on the  
9 papers and what has been said on cross-motion for summary  
10 judgment and what was argued here today.

11 MR. ELLIS: That's fine, Your Honor. Both briefs  
12 will be filed next Tuesday. Agree, Mike?

13 THE COURT: Simultaneous.

14 MR. ROBERTS: Very well.

15 THE COURT: Thank you.

16 MR. ELLIS: Thank you, Judge.

17 MR. ROBERTS: Thank you.

18 THE CLERK: All rise. (4:51 p.m.)

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20 PROCEEDINGS CONCLUDED

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